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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1957.

No. 48.

ROSE STAUB,
Appellant,

v.

CITY OF BAXLEY,
Appellee.

On Appeal from the Court of Appeals of the State of Georgia.

BRIEF FOR THE APPELLEE.

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QUESTIONS PRESENTED.

1. Whether the failure of the State Court to pass on the validity of the municipal ordinance in question was based on adequate non-Federal grounds.

2. Whether a municipality may by ordinance require a person following occupation of organizer to file application for and obtain a permit prior to selling memberships in an organization requiring the payment of dues. (In present instance, a labor union.)

STATEMENT OF FACTS.

The municipal ordinance in question adopted by the City of Baxley in 1949, consists of 9 separate, distinct sections (R. 9-11). The sections provide in substance:

Section 1. Application to Mayor and Council for permit prior to soliciting among citizens of Baxley for memberships in an organization requiring payment of dues by its members.

Section 2. Information concerning the applicant and the nature of the organization.

Section 3. The manner of presentation and a hearing.

Section 4. Consideration by Mayor and Council.

Section 5. Granting or refusing of application to be determined by Mayor and Council after hearing.

Section 6. Payment of license fee in certain instances.

Section 7. Penalty for violation.

Section 8. Repeals conflicting ordinances.

Section 9. Provides the invalidity of one section will not void remaining sections.

By its charter the City of Baxley is vested with authority to regulate all occupations and callings within its municipal limits and to enact such ordinances, by-laws, rules and regulations its discretion may be necessary for the good, order, peace, health, prosperity and security of the City and its citizens. (Applicable sections of charter of the City of Baxley, Appendix p. 13).

Appellant on the 19th day of February, 1954, came to the City of Baxley seeking to sell memberships in International Ladies' Garment Workers' Union, an organization that requires its members to pay dues. On this ques-

tion W. A. Schuman, Chief of Police of the City of Baxley, at trial for violation of the ordinance, testified: "I talked with Rose Staub. She told me what she was doing in the City of Baxley at that time. At first she denied it but then she showed me her card for International Ladies' Garment Workers' Union, then told me what she was doing, both of them. She said she was employed by that organization. Both of them said they were soliciting members for that organization in Baxley" (R. 16).

Sylvia Dixon testified: "They asked those present to join the union. They told us that the dues would be 64¢ a week. They stated they had membership cards. They offered us the cards."

Catherine Taylor testified: "They asked me to become a member of the union . . . at that meeting they (Rose Staub and Mamie Merritt) told us the dues would be 64¢ a week. They stated that they were to be paid four weeks in advance if we joined. They said they had membership cards there. **They offered to give us membership cards upon the payment of the[1] amount stated**" (R. 20).

Rose Staub refused to file an application for a permit as required by the ordinance and was tried in Mayor's Court of the City of Baxley for a violation of the ordinance. She was convicted. The Superior Court of the Brunswick Circuit affirmed the conviction on certiorari.[2]

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[1] All emphasis in this brief supplied by writer.

[2] Appellant in brief, page 11, charges City officials with having knowingly made misrepresentations. While the matter is not relevant, such charge cannot be passed unnoticed. It is, of course, inserted in an attempt to prejudice. It is absolutely false.

On certiorari from Mayor's Court the City made motion to dismiss on ground that the bond was approved by Mrs. Sharpe who was not Clerk of Mayor's Court but of City Council. (Griffin v. City of Albany, 88 Ga. App. 229.) Appellant replied that her attorney had asked the City's attorney if Mrs. Sharpe was Clerk of Mayor's Court and had received an affirmative reply. As to what

The Georgia Court of Appeals affirmed on the ground that the constitutional question has not been properly presented and the Supreme Court of Georgia denied certiorari.

JURISDICTION.

This Court noted probable jurisdiction. Such ruling does not preclude further consideration of the jurisdictional question.

The judgment of the Court of Appeals of Georgia appealed from, did not make any decision on the constitutional questions raised by appellant but was based on a question of procedure under State law. The grounds on which the judgment of the State court were based and the authority therefor was discussed in appellee's motion to dismiss. Attention is again called thereto by reference.

The cases cited by the Court of Appeals on these specific questions have never been reversed and remain the law of this State. The Georgia cases cited by appellee do not hold to the contrary.

If the State Court sought to evade the constitutional questions and based its decision on spurious grounds (jurisdictional statement, p. 31, note 16), then the jurisdiction of this Court could not be questioned. Just as well settled

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was the question and the answer, it was a disputed issue. The issue was resolved in favor of the City by the Superior Court Judge. It is not believed that Mr. Wilson, trial attorney for appellant, would knowingly make a misrepresentation in a legal proceeding; and the writer never has nor would do so.

Mrs. Sharpe testified at the trial in Mayor's Court that her position was that of Clerk of City Council (R. 23). The questions and answers appear in brief of evidence on file in Superior Court as follows:

"Q. What position, if any, Mrs. Sharpe, do you hold with the City of Baxley?
A. Clerk of City Council.
Q. How long have you held that?
A. Since February, 1953."

is the principle that if there is no question of evasion this court should accept the ruling of the State Court on matters of State law, either of fact or practice.

Fox River Paper Co. v. Railroad Commission, 274 U. S. 651.

State law and practice in this regard are no less applicable when Federal rights are in controversy than when the case turns entirely upon questions of local or general law.

Hagan John v. Lewis Paulin, 231 U. S. 583.

The Georgia Court of Appeals decided the case on local procedural rules of long standing.. The fact that such points may not have been made or passed on in other cases decided is not unusual but is most frequently the case. The motion to dismiss should be granted.

SUMMARY OF ARGUMENT.

Under the facts of this case appellant was engaged in the City of Baxley in her regular occupation, that of a union organizer, in connection with which she was attempting to sell memberships in the union to citizens of Baxley. Under such circumstances the conviction of appellant for the violation of a city ordinance requiring her to obtain a permit before engaging in her occupation in the City of Baxley did not violate her constitutional rights.

CONSTITUTIONALITY OF THE ORDINANCE.

The effect of the ordinance is to require a permit for one selling memberships in an organization. While the term "solicit" is used, the ordinance provides on its face that it only applies to organizations requiring payment of dues, or that may assess dues against its members. In ordinances with respect to sale of articles the word "solicit"

is used as synonymous with the word "sell." To obtain the membership of a person in an organization requiring payment of dues is not unlike the selling of any article or service with payments to be made in the future.

Myriad state and municipal laws requiring licenses of peddlers, salesmen, traders, brokers, insurance agents, real estate operators, undertakers, veterinarians, doctors and lawyers are enforced and their validity accepted as a matter of course.

Not unusual are ordinances requiring information in the application for a permit those: who peddle a five cents article along the street, who sell a tract of real estate, who insure improvements on property, render medical services, give legal advice or prepare our bodies for burial. In each instance it could and has been argued that the freedoms guaranteed by the Constitution were violated by such restrictions. The answer follows that when the welfare of the public requires reasonable restrictions are valid.

As pointed out in appellant's brief (appellant's brief, p. 37, note 23) the trade of a union organizer is a regular occupation followed by many for which training is required and given. It was the occupation being followed by appellant in the City of Baxley. In that respect it is not different from any other occupation or trade for the following of which the state and municipalities may enact regulations, not primarily for the revenue that may be produced, but to protect the public against lack of skill or character in the person who would follow the occupation of selling services or articles.

"The power of the State to provide for the general welfare of its people authorized it to provide all such regulations as in its judgment will secure, or tend to secure, them against the vagrancies of ignorance and

incapacity, as well as deception and fraud. As a means to this end it has been the practice in different states from time immemorial to exact in many pursuits a certain degree of skill and learning upon which the community may confidently rely, their possession being generally ascertained upon an examination by parties or competent persons. . . ."

Dent v. State of West Virginia, 129 U. S. 114.

A few of the instances in which this court has held legislation requiring licenses prior to the following of an occupation to be valid where practically the same contentions were made as are here made, are:

Osteopath—**Collins v. State of Texas, 223 U. S. 228;**
Dentist—**Graves v. State of Minnesota, 272 U. S. 425;**
Employment Agency—**Leroy Brazee v. State of Mich., 241 U. S. 340;**
Vender of farm products—**Payne v. State of Kansas, 248 U. S. 112;**
Insurance agent—**LaTournette v. McMaster, 248 U. S. 465;**
Real estate broker—**Bratton v. Chandler, 260 U. S. 110.**

The importance to public security of knowing the character and ability of those who sell services and products to the public has long been recognized and regulations to such an end consistently held valid. Is it less important to know the character of an individual seeking to sell memberships in an organization, an organization which may not only seriously affect the course of the individual member's life, but may well have a definite effect upon the welfare of the community in which such organization exists?

No one could question that labor unions have played an important part in the progress of our society. Likewise, many other organizations, including civic clubs, fraternal

organizations, civic organizations and religious organizations and societies have been most beneficial. It is not to be any less doubted that subversive organizations controlled by questionable characters can and do adversely affect the public welfare and order. Could "Dio organizers"[3] of phony union local charters operate if municipal regulations existed of the type here requiring information as to the organizer and the organization? Is there any doubt that mobsters, taking advantage of lack of local regulations constitute a present, grave menace to not only the public generally but especially to organized labor?"

License Fee Not Involved.

A substantial portion of appellant's brief is devoted to Section VI of the ordinance which section provides for the payment of a license fee under certain circumstances. In the motion to dismiss on behalf of appellee it was conceded that this particular section of the ordinance was invalid. (Motion to dismiss p. 9.) Therefore, in this brief we will not devote any time to that question.

No Application Filed.

Appellant not having filed an application for the permit is not in position to contend that any particular section of the ordinance is void but must rely upon every material section being invalid. Then too, in view of the long standing rule that public officers will be presumed to act within their legal authority, the presumption follows that no invalid section of the ordinance would have been enforced against appellant if application had been filed.

In **Grundling v. Chicago, 177 U. S. 183**, the appellant, who likewise had not applied for the license in question, contended the ordinance requiring it unconstitutional be-

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[3] Time Magazine, August 19, 1957, p. 11.

cause the power vested in the mayor to grant was arbitrary. This Court there stated:

> "He made no application, the mayor had not refused it non constat that he would have refused it if application had been made by the plaintiff in error. Whether the discretion of the mayor is arbitrary or not would seem to be unimportant to the plaintiff in error so long as he made no application for the exercise of that discretion in his favor and was not refused a license."

The One Question.

The sole question on the merits is whether a municipality may require one who claims the occupation of union organizer to secure a permit before selling memberships to citizens of the municipality.

A similar question was discussed at length in the case of **Thomas v. Collins, 323 U. S. 516.** Every argument, pro and con, that could be made here appears to have been reviewed in that case. A repetition at length would seem an imposition on the patience of the Court.

In Thomas v. Collins there was involved a Texas statute which prohibited solicitation of members to join a Union prior to obtaining an organizer's card. It was held, **as applied to the facts of that case,** the statute violated appellant's constitutional rights. The decision insofar as it holds the statute invalid restricts itself to the facts of the case. "We do not undertake to determine Section V in any other application than that made upon the facts of the case."[4]

It answers in the negative appellant's contention that Congress occupied the field of labor regulations and

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[4] This and all quotations hereafter are from Thomas v. Collins, 323 U. S. 516.

closed it to State regulations holding: "That the State has the power to regulate unions with a view to protecting the public interest, is, as the Texas court said, hardly to be doubted. They cannot claim special immunity from regulations. A majority of the Court do not agree that Section V, or its application, conflicts with National Labor Relations Act."

The decision pointed out that the sole purpose of Thomas going to Houston was to address a meeting held in connection with a campaign to organize a local Labor Union. The contested restraining order was issued in contemplation of his speech to restrain him from any language which could be taken as solicitation, general or specific. Primarily the only action of Thomas was in a speech to tell of the advantages and disadvantages of a union and joining a union. He did not solicit funds or property and neither asked for or accepted funds or property for the union at the time of his address or while in Texas. "Thomas went to Texas for one purpose, and one only, to make the speech in question. Its sole object was to publicly proclaim the advantages of Workers' Organization and to persuade workmen to join Local No. 1002 as a part of a campaign for members. These were the sole objectives of the meeting . . . The invitations, both general and particular, were parts of the speech, inseparable incidents of the occasion and all of that was said and done."

Under those facts this Court held that the Texas statute as applied in that instance denied Thomas his constitutional rights. If the facts in the present case are not distinguishable, then the ruling in the Thomas case would apply. They are distinguishable.

In Thomas v. Collins as above pointed out, the sole purpose of the visit of Thomas to Houston was to address a meeting in a campaign to organize a Labor Union. Any solicitation of membership on his part was incidental. In

the instant case it is apparent that appellant is one whose occupation is the selling of memberships in unions. Any discussion of benefits of unions and memberships in them is incidental to the primary purpose of obtaining subscribers to memberships. This occupation of appellant which was being carried on in Baxley, of course, involved speech on the part of Rose Staub. Any selling job does. Whether it is the sale of articles of merchandise or professional services. She was seeking to induce citizens of Baxley to secure membership cards upon the payment in advance of four weeks dues at 64¢ per week. She had membership cards with her and was offering to deliver them upon the payment of such amount. Her actions brought her directly within the ruling of Thomas v. Collins: "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes collection of funds or securing subscriptions, he enters a realm when reasonable restriction or identification requirements may be imposed."

Here appellant, according to the evidence, sought to collect funds and secure subscriptions to memberships. Her actions made her occupation subject to reasonable regulations. Requiring her to file application giving the usual information with respect to the organization for which members were sought, and previous residence and employment of applicant (Section 11, R. 10) could not be said to be unreasonable. To hold that under such circumstances it is a violation of her constitutional rights for a legislative unit of government to require her to obtain a permit before engaging in such occupation within its province, would necessarily place such occupation in a special sphere.

Appellant contends that labor unions should be exempt from municipal regulations because in the power of regulation lies the power to destroy by preventing organized

efforts to obtain subscriptions for membership. This presupposes general public desire to prevent the existence of labor unions. We would not assume such supposition to be true. The benefits to labor through unions is universally recognized. It is the prevention of subversive organizations through the efforts of disreputable parties, sometimes using the good will of organized labor as a selling factor, that should be controlled in the interest of public welfare.

It is believed that such control can be most effective at local levels. In spite of appellant's apparent fear of municipal regulation, such local control exists with respect to occupations and trades, in practically all fields. We do not believe there could be cited any instance in recent times where such local control has caused any legitimate, worthwhile occupation or trade to cease to exist. Can it be doubted that without such control the existence of organized society would be gravely menaced?

With Section VI eliminated the ordinance is a reasonable regulation. It is a means through which municipal officials can have information with respect to the persons seeking to sell its citizens organization memberships, and of the nature of the organization. It will prevent the selling of memberships by questionable characters in subversive, phony, and fraudulent organizations. It is a needed regulation within the police power of the City.

We respectfully submit that the judgment of Georgia Court of Appeals should be affirmed.

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Baxley, Georgia.

APPENDIX.

Charter City of Baxley.

Ga. Laws 1911, p. 700 at p. 725.

Section 60.

"That the City Council shall have the right and power to pass all such ordinances, bylaws, rules and regulations as may in their discretion be necessary to carry out and enforce the authority granted under this charter, and as they may think necessary for the good, order, peace, health, prosperity, comfort and security of said city and the inhabitants thereof . . ."